



COWAN  
DeBAETS  
ABRAHAM &  
SHEPPARD LLP

41 MADISON AVENUE  
NEW YORK, NY 10010  
t: 212 974 7474  
f: 212 974 8474  
www.cdas.com

ELEANOR M. LACKMAN  
PARTNER  
212 974 7474 ext 1958  
elackman@cdas.com

March 26, 2012

VIA ECF FILING

Magistrate Judge Arlene R. Lindsay  
Long Island Federal Courthouse  
814 Federal Plaza  
Central Islip, New York 11722-4451

Re: Pivotal Payments, Inc. v. FVA Ventures, Inc. et al. 2:11-cv-05713

Dear Judge Lindsay:

We represent Plaintiff Pivotal Payments, Inc. ("Pivotal") in the above-referenced action and write to respectfully request that the Court disregard the improper response filed by defendants FVA Ventures, Inc. d/b/a ViSalus Sciences ("ViSalus") and Blyth, Inc. ("Blyth") (together, "Defendants") late on March 23, 2012, in opposition to Pivotal's request for additional time to prepare and file its reply papers in further support of its motion to amend. Presently, the papers are due to be filed today, although Defendants have agreed to a two-day extension that has not yet been so ordered due to Pivotal's need for more time beyond that.

Rather than setting forth a basis to refute Pivotal's good faith belief that it requires additional time for reply on Pivotal's motion to amend, Defendants' letter amounts to a letter brief that re-sets forth its merits arguments and refers to facts that are outside the record and filed pleadings. Defendants go so far as to suggest that if Pivotal puts in papers to support its case, it would do so in violation of Rule 11. Pivotal's proposed Second Amended Complaint is far from improper pleading, but the point of this letter to object that Defendants' incantation of Rule 11 is highly improper, especially so because, among other reasons, Rule 11's safe harbor provision *invites* amended pleadings.

Noticeably absent from Defendants' letter is any basis to postpone the full submission of papers on *Pivotal's* motion to amend by approximately one week; certainly the argument that "[t]wo institutions that are not parties to this litigation hold more than \$10 million that ViSalus owns" is outside the record and filed pleadings. ViSalus' repeated reference to \$10 million is not a sufficient basis to show that Pivotal's request is other than in good faith, especially so because Pivotal alleges the ViSalus' termination was wrongful and

JEAN ALBERT  
FREDERICK P. BIMBLER  
SUSAN H. BODINE  
ANDREA F. CANNISTRACI  
AL J. DANIEL, JR.\*  
TIMOTHY J. DeBAETS  
MATTHEW A. KAPLAN\*  
ELEANOR M. LACKMAN  
ELLIS B. LEVINE  
MARY E. RASENBERGER\*  
M. KILBURG REEDY  
JOSHUA B. SESSLER  
J. STEPHEN SHEPPARD  
MARC H. SIMON  
KENNETH N. SWEZEY  
NANCY E. WOLFF\*

ZEHRA J. ABDI  
DAVID E. ASHLEY\*  
LISA QUINTELA\*  
STEVEN A. WERIER  
JOSHUA S. WOLKOFF\*

OF COUNSEL:  
ANNE C. BAKER  
MICHAEL BRACKEN\*  
ROBERT I. FREEDMAN  
JERROLD B. GOLD  
JANIS C. NELSON\*

SPECIAL COUNSEL:  
ROBERT J. EPSTEIN  
  
PHILIP M. COWAN  
(1943-2001)  
HOWARD ABRAHAM  
(1945-1996)

\* ADMITTED IN CA  
\* ADMITTED IN NJ  
\* ALSO ADMITTED IN CT  
\* ALSO ADMITTED IN DC  
\* ALSO ADMITTED IN NJ  
\* ALSO ADMITTED IN AR & DC  
\* ALSO ADMITTED IN CA & PA

BEVERLY HILLS OFFICE:  
9595 WILSHIRE BLVD, SUITE 900  
BEVERLY HILLS, CA 90212  
t: 212 497 0917 / f: 310 492 4394



COWAN

DeBAETS

ABRAHAMS &

SHEPPARD LLP

41 MADISON AVENUE  
NEW YORK, NY 10010  
t: 212 974 7474  
f: 212 974 8474  
www.cdas.com

PAGE 2

ViSalus has not sought any expedited or third-party relief itself. As to the motion to amend itself, the Court may adjudicate it in due course without Defendants' baseless attempts to jump to the front of the line.

We regret needing to add additional paper to this matter, particularly when professional courtesy could have eliminated the need to contact the Court in the first place, but we believe that no other option existed given the improper letter briefing that Defendants deemed appropriate to file. We thank the Court for its attention to Pivotal's request and hope that its requested extension will be granted.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Eleanor M. Lackman'. The signature is fluid and cursive, with a long horizontal stroke at the end.

Eleanor M. Lackman

cc: All counsel of record (via ECF)